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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/710,996

08/16/2004

Navarre Stephen Ginsberg

9383

45577 7590 03/06/2007
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EXAMINER

SWIATEK, ROBERT P

ART UNIT

PAPER NUMBER

3643

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE | DELIVERY MODE |
|----------------------------------------|-----------|---------------|
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3 MONTHS

03/06/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

| | | | |
|------------------------------|--------------------------------------|--------------------------------------------------|--|
| Office Action Summary | Application No. 10/710,996 | Applicant(s) GINSBERG, NAVARRE STEPHEN | |
| | Examiner Robert P. Swiatek | Art Unit 3643 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 9-11 is/are pending in the application.
- 4a) Of the above claim(s) 10 and 11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Newly submitted claims 10, 11 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: They recite a broad method of entertaining and exercising an animal by moving a feed dispenser along a first path and dispensing feed along a second, different path. The Office did not search this method during preparation of the original action.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 10, 11 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7, 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lanham (US 2,379,724) in view of Grether (US 2,742,196). The Lanham dispensing device includes a hopper 16 with a bottom 17 having an opening therein, a substantially horizontal rotatable distribution controller 20 having a series of openings 21 near its periphery and disposed upon the hopper bottom 17, a pair of wheels 14 mounted at opposed ends of an axle 13 and adapted to rotate the controller 20 through two interengaging bevel gears 19, 33, a handle 12, a center peg

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18 extending between one bevel gear 19 and controller 20, a distribution wheel 36 mounted upon a horizontal shaft 32 extending through second bevel gear 33, a guidance member 22, 24 located between the controller 20 and the distribution wheel 36, and a parking peg contrivance 15 that would serve to hold the distributor in an upright orientation. The Lanham apparatus lacks a stirrer within the hopper and above the distribution controller 20. The Grether patent discloses a particulate material dispenser including a hopper 26 having an agitator 30, 31 in its bottom. The agitator 30, 31 is secured to a vertical spindle 28, whereby rotation of the spindle causes the agitator to turn and break up clumps of the particulate material—in this case, fertilizer—contained within the hopper. It would have been obvious to one skilled in the art to connect a stirring device or agitator to the upper end of the center peg 18 of Lanham and atop the distribution controller 20, in view of the teaching of Grether that a rotatable agitator employed in conjunction with fluent material helps keep it from clumping, allowing it to be smoothly dispensed. Applicant's statement of intended use has not been given weight inasmuch as the combination Lanham as modified by Grether could be employed to dispense animal feed *per se* rather than seeds; moreover, seeds themselves might serve as a source of food for some animals.

Claims 1-7, 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, lines 6, 7, "the rotation transfer means" lacks a prior antecedent basis. It is noted this element is introduced in line 9 of claim 1.

If an amended claim 1 is filed that additionally includes the distribution wheel of claim 6 *and the fact that it is horizontally oriented and rotatable about its vertical axis*, it might be allowable. Moreover, claims 10, 11 must be canceled before this case can be passed to issue.

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In any response to this action, the claims should appear on separate pages by themselves; remarks by applicant should be confined to a section entitled *Remarks*. Additionally, applicant is requested to provide a substitute specification that does not include the extraneous semicolons referred to in the first Office action.

The abstract of the disclosure is objected to because it should appear on a separate page by itself. Correction is required. See MPEP § 608.01(b).

Applicant's arguments filed 4 December 2006 have been fully considered but they are not persuasive. Claims 1-7, 9 are not believed allowable for the reasons set forth above.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Summary: Claims 1-7, 9 have been canceled; claim 8 has been canceled; claims 10, 11 have been withdrawn from consideration.

RPS: 571/272-6894

2 March 2007

Robert P. Swiatek
ROBERT P. SWIATEK
PRIMARY EXAMINER
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